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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD ELLSWORTH ABEL,

Defendant and Appellant.

D073900

(Super. Ct. No. SCN368936)

APPEAL from an order of the Superior Court of San Diego County, Sim Von Kalinowski, Judge. Affirmed.

Richard Ellsworth Abel, in pro. per. Alex Kreit, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Richard Ellsworth Abel pleaded guilty to possession of methamphetamine for sale (Health and Saf. Code,¹ § 11378). He also admitted two prior convictions within the meaning of section 11370.2. The parties stipulated to an eight-year split sentence. The

¹ All further statutory references are to the Health and Safety Code unless otherwise specified.

change of plea form included a so-called *Cruz*² waiver, which informed Abel that if he did not show up for sentencing his plea would stand but the agreed sentence could be changed.

Abel did not contact the probation officer or appear for sentencing. Abel was sentenced several months later. By the time of sentencing, legislation had rendered the enhancements for the prior convictions invalid. Abel was sentenced to three years in local custody. The court also imposed a consecutive 364-day sentence following the revocation of probation for a separate offense. Prior to his guilty plea, Abel made a request for a *Marsden*³ hearing, seeking to replace appointed counsel. Following a hearing, the trial court denied the request.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*) indicating he has been unable to identify any arguable issue for reversal on appeal. Counsel asks this court to review the record for error as mandated by *Wende*. Abel has filed a one-page supplemental brief in which he simply says the court interfered with his right to counsel.

STATEMENT OF THE FACTS

This appeal is from a guilty plea; thus, there is no factual record regarding the offense except for the probation officer's report. That report indicates police served a

² Referring to *People v. Cruz* (1988) 44 Cal.3d 1247.

³ *People v. Marsden* (1970) 2 Cal.3d 118.

search warrant on Abel's storage unit and found methamphetamine inside. A search of his phone revealed text messages indicating an involvement in sales of the substance.

DISCUSSION

As we have noted, appellate counsel has filed a brief pursuant to *Wende*. Counsel has also identified the following possible, but not arguable issues for our consideration, and in compliance with *Anders v. California* (1967) 386 U.S. 738 (*Anders*): 1. Did the trial court abuse its discretion in denying Abel's *Marsden* motion; 2. Whether the trial court erred in ordering penalty assessments for the laboratory fee and the drug program fee; and 3. Whether the court erred in allegedly failing to give a *Cruz* advisement (which advisement was in fact given).

We have reviewed the entire record as mandated by *Wende* and *Anders*. We have not discovered any arguable issue for reversal on appeal. Competent counsel has represented Abel on this appeal.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

NARES, J.

GUERRERO, J.